

**MINUTES OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING  
FEBRUARY 27, 2006**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 27, 2006 in the City Council Chamber of the Melvin Municipal Office Building, Greensboro, North Carolina commencing at 2:08 p.m. The following members were present: Vice Chair John Cross, Ann Buffington, Jim Kee, Russ Parmele and Rick Pinto. Bill Ruska, Zoning Administrator and Blair Carr, Esq., Terry Wood, Esq. and Clyde Albright, Esq. from the City Attorney's Office were also present.

Vice Chair Cross explained the policies and procedures to be followed during the meeting.

**APPROVAL OF MINUTES OF LAST MEETING**

Mr. Kee moved to approve the minutes of the January 23, 2006 meeting as written, seconded by Mr. Pinto. The Board voted unanimously in favor of the motion.

Mr. Ruska was sworn in for evidence to be given by him on the requests before the Board today.

Vice Chair Cross asked if there were any changes to the agenda. Mr. Ruska stated that Item B, BOA-06-04, 405 South Booker Street can be withdrawn as that matter has been worked out as a modification; Item E, BOA-05-48, 608 S. Holden Road, to be withdrawn; Item C, BOA-06-11, 2449 Battleground Avenue has been requested to be continued by the applicant's attorney as there is a text amendment to the UDO and, if that text amendment is adopted by City Council, it will remove the need for this variance; Item E, BOA-06-13.

**OLD BUSINESS**

**VARIANCE**

**(A) BOA-06-03: 405 SOUTH BOOKER STREET CHANCELLOR COURT, LLC REQUESTS A VARIANCE FROM THE MINIMUM INTERIOR PROPERTY LINE SETBACK. VIOLATION: THREE MULTIFAMILY BUILDINGS WILL ENCROACH 4 FEET INTO A 20-FOOT INTERIOR SETBACK. THIS CASE WAS CONTINUED FROM THE JANUARY 23, 2006 MEETING. TABLE 30-4-6-4, PRESENT ZONING – CD-RM-26, BS-4, CROSS STREET – CUNNINGHAM STREET. (GRANTED)**

Mr. Ruska stated that Chancellor Court, LLC is the owner of a parcel located at 405 South Booker Street. This case was continued from the January 23, 2006 meeting. The lot is located east of South Booker Street and west of S. O'Henry Boulevard on zoning map block sheet 4. The lot is zoned CD-RM-26. The applicant is requesting a variance from a minimum interior property line setback. Three proposed multifamily buildings will encroach 4 feet into a 20-foot interior setback. The minimum street frontage and lot width are unique based on the cumulative total of nonlinear lot lines; however, compliance with both of these minimum requirements has been achieved. The applicant has submitted a site drawing. The northern portion of the property contains a 100-foot railroad easement. Buildings and required parking spaces are not allowed in a railroad easement without written permission from the railroad. The applicant is proposing to construct 36 multifamily units, attempting to provide the required parking spaces, and stay out of the railroad easement. The three buildings are proposed to be located on the eastern portion of the lot. Each building will contain twelve units. The adjacent property to the north and east is zoned GB, The adjacent property located to the west is zoned GO-H, and the property located to the south is zoned RM-26.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Chuck Truby, 502 Waycross Drive, was sworn in and stated that he is the engineer doing the development plans for this project. They are trying to work with Norfolk/Southern Railroad because of the right-of-way abutting this property. There are encroachments, fences, parking lots, buildings and a lot of other structures located within the 100 foot corridor, but the railroad will not allow anything in their right-of-way. They have redesigned the plans so that there are as many parking spaces as possible on the site and they are 4 spaces short but they are doing some tree preservation and there is a provision in the ordinance that allows a reduction in parking if you save some trees.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

Ms. Buffington moved that in the matter of BOA-06-03, 405 Booker Street, based on the stated findings of fact being incorporated, the Zoning Enforcement Officer be overruled and the variance granted based on the following: If the applicant complies with the provisions of the ordinance there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance; if the applicant complies with the provisions of the ordinance he could make no reasonable use of this property because the property was purchased under the assumption that they would be able to use the property for the project intended and because of the lack of parking setback, it is of no use to them; the hardship of which the applicant complains results from the unique circumstances related to the property because it is a very unique property because of the location of the railroad right-of-way; the hardship results from the application of the ordinance to the property because there is no way that they can get the amount of parking required into the required setback; the hardship is not the result of the applicant's own actions because they had nothing to do with the requirements of the railroad or the easements; the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because a lot of the problems with the setback requirements would not be evident in other properties; the granting of the variance assures the public safety and welfare and does substantial justice because it is in line with what other properties are doing there, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**(B) BOA-06-04: 405 SOUTH BOOKER STREET CHANCELLOR COURT, LLC REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT, VIOLATION: THE PROPOSED CONSTRUCTION OF 36 MULTIFAMILY DWELLING UNITS WILL REQUIRE 72 PARKING SPACES AND THE APPLICANT IS PROPOSING TO PROVIDE 67 PARKING SPACES, THUS A VARIANCE FOR 5 SPACES IS REQUIRED. THIS CASE WAS CONTINUED FROM THE JANUARY 23, 2006 MEETING. TABLE 30-5-3-1, PRESENT ZONING – CD- RM-26, BS-4, CROSS STREET – CUNNINGHAM STREET. (WITHDRAWN)**

Mr. Parmele moved to withdraw this item from the agenda at the request of the applicant, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**(C) BOA-06-05: 3407 HIGH POINT ROAD NSHE GREENSBORO LLC REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK. VIOLATION: A PROPOSED LOADING DOCK WILL ENCROACH 18 FEET INTO A REQUIRED 30-FOOT SETBACK FROM PASCHAL STREET. THIS CASE WAS CONTINUED FROM THE JANUARY 23, 2006 MEETING. TABLE 30-4-6-5, PRESENT ZONING – HB & CD-LI, BS-43, CROSS STREET – PASCHAL STREET. (CONDITIONALLY GRANTED)**

Mr. Ruska stated that NSHE Greensboro, LLC is the owner of the property located at 3407 High Point Road. This case was continued from the January 23, 2006 meeting. The lot is located at the southeastern intersection of High Point Road and Paschal Street on zoning map block sheet 43. The front half of the property is zoned HB and the rear half is zoned CD-LI. The applicant is requesting a variance to construct a loading dock, which will encroach 18 feet into a 30-foot setback from Paschal Street. The property contains a 90,000 square foot building. Approximately 55,000 square feet are located on the HB portion of the lot and approximately 35,000 square feet are located on the CD-LI portion. The loading dock is proposed to be built on the HB portion adjacent to Paschal Street. The HB setback requirement is 30 feet from the street right-of-way line. The entire existing building is set back approximately 24 feet from Paschal Street. The HB portion encroaches 6 feet. The HB zoning district requires a structure to be 30 feet from a local street. The LI portion encroaches approximately one foot. The LI zoning district requires a structure to be 25 feet from a collector street. This building was constructed under the previous zoning requirements which provided for a 40-foot setback from the centerline of Paschal Street. It was in compliance with the street setback at that time. The property located on the north side of High Point Road is zoned HB, the property located to the east is zoned LI and GB, and the property located to the south is zoned GO-H.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Michael Fox, attorney representing the applicant, was sworn in and stated that this property used to be the Rhodes Furniture facility. There are plans to re-use the structure to house several businesses, because it is difficult to find only one business than can make use of this large building. The plans are to break it up into several uses. This would entail the use of a small loading dock at the rear of the building for one of the new businesses. The Zoning Commission recently approved the rezoning of a portion of the building which would allow a warehouse use in the rear and highway business in the front. It is anticipated that there will be three separate retailers in the front. There is no way to get goods and merchandise into the building for the uses in the front portion of the building. He referred to the site plan that had been submitted and explained the use of the loading dock in detail. Paschal is not a heavily traveled street and dead-ends in close proximity to the building. There has been no opposition to the rezoning request for the property. The City Ordinance changed so the setback increased making this variance request seem a lot larger than it actually is.

Tim Smith, 106 Henry Drive, Jamestown, was sworn in and in response to questions by the Board members, stated that trucks would not be allowed to park so that they would be taking up the street right-of-way, they would have to park parallel to the building. There are also curb cuts on the right-hand side of the current dock.

In response to discussion by the Board members, Attorney Fox stated that the applicant would be willing to offer to close the curb cut immediately beside the dock, if that would be helpful in making their decision.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

Mr. Pinto moved that in regard to BOA-06-05, 3407 High Point Road, based on the stated findings of fact and testimony provided, that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property. This is an older property which is a large warehouse-like facility and is difficult, if not impossible, to find a new tenant for such a large space. It is to be encouraged that older buildings are to be renovated and used, if possible, as opposed to being allowed to fall into a state of disrepair. A reasonable solution is to divide the building into smaller sections, which they have done and the smaller sections necessitate loading docks to allow product to be brought into and removed from each of the divided sections. Based on the configuration of the building and the fact that it was built when the setback requirements were larger, allowing the

buildings to be closer to the street, any loading dock is almost by definition, going to violate the setback requirements. In this case, the proposal is to only put a 12 foot loading dock that can be functionally appropriate. The hardship of which the applicant complains results from the unique circumstances as previously stated. A hardship results from the application of this ordinance, also as previously stated. The hardship is not the result of the applicant's own action as the building was there when the setback requirements were of different length. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and does substantial justice. There has been no evidence that shows that the loading dock coming closer to Paschal Street creates a public safety issue and the renovation of the building helps the public safety as it will not fall into disrepair. As a condition of the granting of the variance, the curb cut that is directly in front of the proposed new dock and between the new dock and Paschal Street would be closed, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**(D) BOA-06-06: 310 WEST MEADOWVIEW ROAD HERITAGE HOUSE 310, LLC REQUESTS VARIANCES FROM THE PARKING REQUIREMENT THAT PARKING SPACES FOR A BAR MAY NOT BE LOCATED OFF-SITE AND FROM THE REQUIREMENT THAT REQUIRED PARKING FOR A BAR MAY NOT BE LOCATED ACROSS AN INTERVENING MINOR THOROUGHFARE. THIS CASE WAS CONTINUED FROM THE JANUARY 23, 2006 MEETING. VIOLATION #1: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING SPACES FOR A PROPOSED BAR OFF-SITE FROM THE ZONED LOT. TABLE 30-5-3-1. VIOLATION #2: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING ACROSS WEST MEADOWVIEW ROAD, A MINOR THOROUGHFARE. SECTION 30-5-3.4(A). PRESENT ZONING – CD-PDI, BS-40, CROSS STREET – VILLAGE GREEN DRIVE (CONTINUE 60 DAYS)**

Marc Isaacson, attorney representing the applicants, asked that this item be continued for 60 days. The matter had been held until the New Business request BOA-06-12 had been heard.

Mr. Kee moved to continue the item until the April meeting, seconded by Mr. Parmele. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**(E) BOA-05-48: 608 SOUTH HOLDEN ROAD DOUGLAS AND DARLENE WEGNER REQUEST A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: A PROPOSED PRIVACY WALL FENCE WILL EXCEED THE MAXIMUM HEIGHT OF 7 FEET BY 2.6 FEET. THIS CASE WAS CONTINUED FROM THE NOVEMBER 28, 2005 MEETING. (A REQUEST TO WITHDRAW THIS ITEM HAS BEEN RECEIVED.) SECTION 30-4-9.6(A). PRESENT ZONING RM-12, BS-45, CROSS STREET – ASHLAND DRIVE. (WITHDRAWN)**

Ms. Buffington moved to withdraw this item at the request of the applicant, seconded by Mr. Kee. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

Mr. Ruska suggested that the next items be discussed together.

**(F) BOA-05-47: 608 SOUTH HOLDEN ROAD DOUGLAS AND DARLENE WEGNER REQUEST VARIANCES FROM AN INTERIOR SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE NOVEMBER 28, 2005 MEETING. VIOLATION #1: ON THE SOUTHERN INTERIOR LOT LINE, TWO PROPOSED PANTRY ADDITIONS AND TWO PROPOSED HOT WATER STORAGE STRUCTURES ATTACHED TO A MULTIFAMILY BUILDING WILL ENCROACH 4.5 FEET INTO AN 18.5 FOOT INTERIOR SETBACK. THE STRUCTURES WILL BE 14.0 FEET FROM THE PROPERTY LINE. TABLE 30-4-6-4(footnote b). VIOLATION #2: ON THE NORTHERN INTERIOR LOT LINE, A PROPOSED HOT WATER HEATER SHED ATTACHED TO THE MULTIFAMILY UNIT WILL ENCROACH 9.1 FEET INTO A 14.5 FOOT INTERIOR SETBACK. THE STRUCTURE WILL BE 5.4 FEET FROM THE PROPERTY LINE. TABLE 30-4-6-4(footnote b). PRESENT ZONING – RM-12, BS-45, CROSS STREET – ASHLAND DRIVE. (GRANTED)**

Mr. Ruska stated that Douglas and Darlene Wegner are the owners of a parcel located at 608 South Holden Road. This case was continued from the November 28, 2005 meeting. The property is located on the western side of South Holden Road north of West Wendover Avenue on zoning map block sheet 45. The lot is currently zoned RM-12. The parcel contains six multifamily units. According to tax records the units were constructed in 1960. Adjacent to the southern lot line, the applicant is proposing to add two pantry additions and two hot water heater storage structures to the existing multifamily building. The structures will encroach 4.5 feet into an 18.5 foot interior setback. The additions will be 14.0 feet from the property line. The applicant is also proposing to attach a water heater structure on the northern interior lot line, which will encroach 9.1 feet into a 14.5 foot interior setback. This addition will be 5.4 feet from the property line. The lot is rectangular shaped. It is approximately 100 feet wide by 300 feet deep. On the multifamily dimensional table (Table 30-4-6-4), Footnote b states: "On lots less than one hundred twenty (120) feet in width at any potential building locations, the minimum interior side setback shall be ten (10) feet or twenty (20) percent of the length of the building facade facing the property line, whichever is greater." The southern building façade is 93 feet in length. Twenty percent of 93 feet is 18.6 feet, which becomes the required setback instead of the typical 20 foot interior setback; thus the variance request is from an 18.6 foot minimum setback. By applying the same calculations on the southern lot line, using a shorter wall length the required setback was reduced to 14.5 feet. The adjacent properties located on the north and south are also zoned RM-12 and the adjacent property located to the west is zoned RS-7.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Doug Wegner, 7602 Wallingford Road, was sworn in and stated that effective July 2006, any multifamily project with more than two dwelling units will have to be sprinkled. He provided floor plans which he explained in detail in regard to the units. He would be using the existing porch foundations.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

Ms. Buffington moved that in BOA-05-47, 608 S. Holden Road, the stated findings of fact be incorporated and based on the testimony that the Zoning Enforcement officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. The apartments are 50 or 60 years old and from another era. If the applicant complies with this provision of the ordinance he can make no reasonable use of the property because if the hot water heaters are no longer made and unavailable, he would not be able to make reasonable use of the property. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the age of the units. The hardship results from the application of this ordinance to the property because if applied, and he is not allowed to change the location of the hot water heater units, it leaves him in a position of possibly not being able to provide hot water heaters for the apartment units. The hardship is not the result of the applicant's own action because he did not make the laws relevant to this property. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because he is trying to upgrade the units. The granting of the ordinance assures

the public safety and welfare and does substantial justice because with the hot water heaters located outside it is safer for the residents, seconded by Mr. Pinto. The Board voted 4-1 in favor of the motion: (Ayes: Buffington, Kee, Parmele and Pinto. Nays: Cross.)

**NEW BUSINESS:**

**VARIANCE:**

- (A) BOA-06-09: 608 SOUTH HOLDEN ROAD DOUGLAS AND DARLENE WEGNER REQUEST VARIANCES FROM AN INTERIOR SETBACK REQUIREMENT AND A BUILDING SEPARATION REQUIREMENT. VIOLATION #1: A PROPOSED DETACHED STORAGE BUILDING WILL ENCROACH 11 FEET INTO AN 18.5 FOOT INTERIOR SETBACK. THE STRUCTURE WILL BE 7.5 FEET FROM THE PROPERTY LINE. TABLE 30-4-6-4(footnote b). VIOLATION #2: THE SAME DETACHED BUILDING INSTEAD OF 20 FEET AS REQUIRED. TABLE 30-4-6-4 (footnote b). PRESENT ZONING – RM-12, BS-45, CROSS STREET – ASHLAND DRIVE. (DENIED)**

Mr. Ruska stated that the applicant is requesting variances for a detached storage building. The proposed building encroaches 11 feet into an 18.5 foot interior setback. The building also encroaches 3 feet into a 20-foot minimum building separation requirement. The detached storage building is proposed to be located adjacent to the southern lot line. The dimensions for the proposed storage shed will be 2.5 feet by 8 feet.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

In response to questions by the Board members regarding the hot water heater storage at the rear of the units, Mr. Wegner explained that the size of hot water heaters has changed dramatically over the years and the same size units are no longer available. There is no room inside the units to be able to store any replacement hot water heaters that would be needed in the future. There are several power feeds that also have an impact on the location of the placement of the hot water heater storage. There are also issues with the landlord being able to access the hot water heaters in case of maintenance problems.

Mr. Pinto moved that in BOA-06-09, 608 S. Holden Road, that the stated findings of fact be incorporated and the testimony provided, that the Zoning Enforcement officer be upheld and the variance denied, seconded by Mr. Kee. The Board voted 4-1 in favor of the motion: (Ayes: Buffington, Cross, Kee, and Pinto. Nays: Parmele.)

The Board took a short break from 3:30 until 3:37 p.m.

- (B) BOA-06-10: 319 MEADOWBROOK TERRACE FRANK AND ROBYN EILER REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A PROPOSED GARAGE ADDITION TO A DETACHED ACCESSORY POOL HOUSE WILL ENCROACH 4.7 FEET INTO A 10-FOOT SETBACK. SECTION 30-4-8.2(B), PRESENT ZONING – RS-12, BS-11, CROSS STREET – SUNSET DRIVE. (GRANTED)**

Mr. Ruska stated that Frank and Robyn Eiler are the owners of a parcel located at 319 Meadowbrook Terrace. The lot is located on the western side of Meadowbrook Terrace south of Sunset Drive on zoning map block sheet 11 and is zoned RS-12. The lot contains a single-family dwelling, an inground pool, and a detached accessory use pool house. The applicant is proposing to construct a garage addition to the detached pool house. The proposed garage will encroach 4.7 feet into a required 10-foot side setback. The proposed garage will contain 480 square feet. The existing pool

house contains 1,056 square feet. The total detached structure will be 1,536 square feet. The proposed addition will fall between the front and rear wall of the house. The applicant met the 10 foot setback from the house. The existing pool house has a greater encroachment than what the applicant is requesting for the garage. The existing structure is located 1.3 feet from the side property line. The dwelling was built in 1925. The tax records do not indicate what year the detached structure was built. The proposed garage will be stepped in and will be 5.3 feet from the side property line. The lot is approximately one acre in size. The northern lot line has a severe angle. The existing dwelling is centered on the lot. The applicant has stated the proposed garage location is due to the location of the established structures, driveway, travel flow, existing landscaping, and there are mature trees located in the rear yard that further restrict placement of the detached garage. The adjacent properties located to the north and south are also zoned RS-12 and the adjacent property located to the west is zoned RS-12 and RS-9.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Ken Eiler, 319 Meadowbrook Terrace, was sworn in and presented a booklet for the Commission members' review. He stated that the house on this property was built in the 1920s and there are many mature trees on the property that would have to be disturbed and possibly taken down to place the proposed structure anywhere else on the property. He answered questions posed by the Board members.

Counsel Carr left the meeting and Counsel Terry Wood arrived for the meeting.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

After a short discussion, Mr. Pinto moved that in BOA-06-10, 319 Meadowbrook Terrace, the findings of fact be incorporated along with the testimony of the applicant, and the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. The house and the pool building were apparently built in 1925 and before there were zoning ordinances in the city, including the side setback requirements; the pool building that is in place already, is just over a foot from the property line and the proposed garage is some 4 to 5 feet from the proposed property line, such that there is an encroachment which is not as great as the structure that is originally there and grandfathered in; there are no other places to put a proposed garage on this property; there are mature hardwoods behind and there are setbacks from the main structure issues and there is a severe angle to the lot which would make putting a proposed garage in any other place impractical, if not impossible; there is an affidavit in the file from the adjoining landowners that encourage the granting of the variance so it is clear that there is no objection from that source. For those reasons, no reasonable use of the property can be made but for the variance. The hardship which the applicant complains results from unique circumstances arising from the unique configuration of the lot and the fact that the original buildings were placed before the zoning ordinances were in place. The hardship results from the application of this ordinance as no garage could be placed on the property but for the granting of the variance. The hardship is not the result of the applicant's own actions as the property was purchased subsequent to when the property was first built on in 1925 and subsequent to the restrictions being placed on the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and the proposed addition will coordinate with the existing home and the existing pool building such that it will maintain or enhance the present view of the property. The granting of the variance assures public safety and welfare and does substantial justice as there is no evidence that this creates any public safety issues, seconded by Ms. Buffington. The Board voted 4-1 in favor of the motion: (Ayes: Buffington, Kee, Parmele and Pinto. Nays: Cross.)

- (C) BOA-06-11: 2449 BATTLEGROUND AVENUE OAKCREST CENTER, LLC REQUESTS A VARIANCE FROM THE MINIMUM LANDSCAPE REQUIREMENTS. VIOLATION: A RECENTLY CONSTRUCTED ADDITION REQUIRED THE INSTALLATION OF TWO PARKING LOT CANOPY TREES, WHICH THE APPLICANT IS PROPOSING NOT TO PLANT. SECTIONS 30-5-4.7 & 30-5-4.8. PRESENT ZONING – RS-12, BS-11, CROSS STREET – SUNSET DRIVE. (CONTINUED)**

Mr. Parmele moved to continue this item, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

- (D) BOA-06-12: 310 WEST MEADOWVIEW ROAD HERITAGE HOUSE 310, LLC REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. VIOLATION: THE SITE PLAN WAS ORIGINALLY APPROVED BASED ON MIXED DEVELOPMENT, ALONG WITH AN INTERNAL PARKING STUDY AND CONTAINS 368 PARKING SPACES. BY RECENTLY PROPOSING TO CHANGE 11,000 SQUARE FEET FROM ACCESSORY USE TO A PRINCIPAL BAR/CLUB USE, THE PARKING REQUIREMENTS INCREASED. THE APPLICANT IS REQUESTING A REDUCTION OF 97 SPACES FOR THE ENTIRE SITE. TABLE 30-5-3-1, PRESENT ZONING – CD-PDI, BS-40, CROSS STREET – VILLAGE GREEN DRIVE. (DENIED)**

Mr. Ruska stated that Heritage House 310, LLC is the owner of the property located at 310 West Meadowview Road. This case was continued from the January 23, 2006 meeting. The lot is located on the north side of West Meadowview Road east of Randleman Road on zoning map block sheet 40 and is zoned CD-PDI. The applicant is requesting variances from two different parking standards. Table 30-5-3-1 requires that a bar must provide its spaces on the same zone lot. The applicant is requesting to have the spaces off the zone lot across West Meadowview Road. Section 30-5-3.5(A) states which land uses can cross a major or minor thoroughfare for required parking. A bar is not included. The applicant is requesting to be allowed to cross a minor thoroughfare (West Meadowview Road) for the provision of required parking spaces. The property has been approved to be developed as mixed use development and the project is titled The Heritage House. A rezoning on January 9, 2006 has been approved to permit 178 condominiums, a restaurant (or catering service) containing 5,300 square feet, office space containing 1,800 square feet, miscellaneous retail containing 6,500 square feet, and other accessory area containing 20,778 square feet. This area could be used for a commercial ballroom, conference and special event facilities, bar, club, or lodge. The applicant is now proposing to use approximately 11,000 square feet of the accessory area for a bar/club. Based on current parking requirements, along with the new uses, the parking requirement has changed and will now require 502 spaces. The site contains 368 spaces. These spaces were approved as the site's minimum parking as a result of a shared parking analysis proposed by Kimley-Horn and Associates, Inc. pursuant to Section 30-5-3.6(c), Reduction of Parking, of the Development Ordinance. Based on the internal capture study, the site could use a reduction of 37 spaces for internal capture. By applying those 37 spaces as well, the requirement is now 465 spaces, thus the parking deficit is now 97 spaces. The calculation for required parking was based on the following: 178 condo units- 238 spaces required; Catering Service (no seating for a restaurant)-17 spaces required; Office @ 1,800 square feet-6 spaces required; Miscellaneous Retail 6,500 square feet-21 spaces required; Bar/club area 11,000 square feet-220 spaces required. These uses total 502 required parking spaces. The applicant is proposing to legally encumber 97 spaces from the property located on the south side of West Meadowview Road which contains a furniture store and a boxing venue event center. At this time, that property has approximately 250 overflow parking spaces. There will be 9,778 square feet of area remaining that could serve as accessory use to the Heritage House, which would not have any applicable parking requirement. The property located on the north side of Village Green Drive is zoned LI, the adjacent property located to the west is zoned HB, the adjacent property located to the east is zoned CD-GO-H, and the property located on the southern side of West Meadowview Road is zoned SC.



Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Marc Isaacson, attorney representing the applicant, was sworn in and presented a handout for the Board members' review. He explained the handout and the photos included in it. He stated that the property is a mixed use development and the developers have invested a substantial amount of money to re-develop this property and bring it back to life. The property was previously used as a retirement community with kitchen and banquet facilities. The proposed use will be for small condo units and a bar/banquet facility. The kitchen, small market, beauty shop and laundry facilities will be closed. He pointed out that the staff report from last month's Zoning Commission hearing went into detail explaining the proposed use and development of the property and gives an idea of the complexity of the property. In regard to the parking spaces, the developer is limited in the ability to procure close parking spaces for use of the proposed facility. There have been discussions with the property owner across the street which was previously the antiques mall to possibly borrow some parking spaces from that property but that property has been placed under contract for sale. There is another property that is not too far from the subject property but it would have to be leveled, paved and lined for use as a parking lot and the costs of such a project would be prohibitive. Other possible options in the immediate area are not possible as the property owners do not wish to encumber their property in such a fashion.

Counsel Clyde Albright arrived and Counsel Wood left the meeting.

Mr. Isaacson addressed questions posed by the Board members concerning the use of the facility as a bar/banquet hall for special events and the use of alcohol on the property. Several of the Board members expressed concerns about the facility being used on a daily basis as a bar.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

Ms. Buffington moved that in BOA-06-12, 310 W. Meadowview Road, the stated finding of fact and testimony presented be incorporated in the record and the variance granted because of the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance they can make no reasonable use of the property. The hardship of which the applicant complains results from unique circumstances related to the property and since it is somewhat landlocked. The hardship results from the application of the ordinance to the property because if the applicant does not provide the proper parking they will be unable to develop the property in the fashion they intended. The hardship is not the result of the applicant's own actions because the use as a practical business of special events for the people that reside there and alumni of the university. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it will be a complimentary use of the property and the development of the condominium units. Granting of the variance assures the public safety, welfare and does substantial justice because that area has been much more unsafe and unjust in the past and the plans for this proposed use will not be detrimental to the area involved. This motion will be conditioned on the fact that the bar/banquet facility portion of the property will only be open three (3) evenings per week, seconded by Mr. Kee. The Board voted 3-2 and the motion was denied. (Ayes: Buffington, Kee and Pinto. Nays: Cross and Parmele.)

**(E) BOA-06-13: 600 ELMWOOD DRIVE JEFFREY AND LISA HILL REQUEST A VARIANCE FOR A PROPOSED KITCHEN ADDITION THAT ENCROACHES INTO THE MINIMUM BUILDING SEPARATION REQUIREMENT. VIOLATION: THE PROPOSED ADDITION WILL BE BUILT 0.9 FEET FROM THE EXISTING DETACHED CARPORT INSTEAD OF 5 FEET AS REQUIRED. SECTION 30-4-8.2(B)(I), PRESENT ZONING – RS-12, BS-53, CROSS STREET – TOCKFORD ROAD. (CONTINUED)**

Derek Allen, attorney representing the applicant, came forward at the beginning of the meeting and asked that this item be continued to the March meeting.

Mr. Kee moved to continue this item, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**SPECIAL EXCEPTION:**

**(A) BOA-06-14: 801 SIMPSON STREET ALISON WEBB REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B)2) TO ALLOW A SECOND STORY ADDITION TO ENCROACH INTO A CENTERLINE SIDE STREET SETBACK. THE PROPOSED ADDITION WILL ENCROACH 6.5 FEET INTO A 40-FOOT CENTERLINE SIDE STREET SETBACK ADJACENT TO CLEVELAND STREET. THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. PRESENT ZONING – RS-7, BS-2, CROSS STREET – CLEVELAND STREET (GRANTED)**

Mr. Ruska stated that Alison Webb is the owner of a parcel located at 801 Simpson Street. This lot is in the Fisher Park Historic District. The lot is located at the northwestern intersection of Simpson Street and Florence Street on zoning map block sheet 2. The property is currently zoned RS-7. The applicant is requesting a Special Exception as authorized by Section 30-4-4.2(B)2) to construct a residential upper story addition onto an existing single family dwelling. The addition will encroach 6.5 feet into a 40-foot centerline side street setback adjacent to Cleveland Street. The proposed addition will not encroach any more than the existing footprint. The applicant is adding a second story addition to an existing single story house. The existing dwelling is located 13.5 feet from the property line or 33.5 feet from the centerline. The addition will be the same. Cleveland Street has a forty foot right-of-way width. This is considered substandard. Typical local/collector streets have a minimum of 50 feet for right-of-way width. The narrow dedication does not allow the structure or the proposed upper addition to meet the centerline setback. At their January 25, 2006 meeting, the Historic Preservation Commission recommended this Special Exception. The adjacent properties are also zoned RS-7.

Vice Chair Cross asked if there was anyone wishing to speak on this matter.

Dantry O'Brien, 1202 Grayland Street, was sworn in and stated that they had been before the Greensboro Historic Preservation Commission and received recommendation of the Special Exception for this project. She agreed with the information that Mr. Ruska provided and was available to answer questions.

Tom Peters, 1202 Grayland Street, was sworn in and answered questions posed by the Board and explained what the proposed project entailed.

There being no one to speak in opposition to the item, Vice Chair Cross closed the public hearing.

Mr. Pinto moved that in BOA-06-14, 801 Simpson Avenue, based on the stated findings of fact and testimony of the applicants being incorporated, the Special Exception be granted because it is in harmony with the general purpose and intent of the ordinance, preserves its spirit and assures public safety and welfare and does substantial justice, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

**INTERPRETATION:**

- (A) **BOA-06-15: 1605 NEW GARDEN ROAD KRUSCH PROPERTIES, LLC REQUESTS AN INTERPRETATION OF A ZONING CONDITION WHICH PROHIBITS "FAST FOOD DRIVE THROUGHS". IT IS THEIR CONENTION THAT COFFEE SHOPS WITH DRIVE THROUGH SERVICE ARE NOT INCLUDED IN THIS USE. CONDITIONAL DISTRICT SHOPPING CENTER #2601, TABLE 30-4-5-1, CD-SC, 121, CROSS STREET – HORSEPEN CREEK ROAD. (CONTINUED)**

Derek Allen, attorney representing the applicant, came forward and asked that this item be continued because there will not be enough Board members available for voting on this item.

Mr. Kee moved to continue this item, seconded by Ms. Buffington. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Corss, Kee, Parmele and Pinto. Nays: None.)

**APPEAL OF A NOTICE OF VIOLATION:**

- (A) **BOA-06-16: 3600 BLOCK OF U.S. 220 NORTH METROPOLITAN ADVERTISING & PROMOTIONS, LLC dba MOBIL AD PRO APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF A PROHIBITED SIGN THAT IS DESIGNED TO BE TRANSPORTED BY VEHICULAR MEANS. SECTION 30-2-2.11 AND 30-5-5.2 (CONTINUED)**

Mr. Ruska stated that Metropolitan Advertising Promo, LLC (web based Mobile Ad Pro) is the owner of a vehicular advertising business. This business advertises for other businesses using portable signs and mobile billboards. The signs are attached to all elevations of a truck and are driven around on public streets or can be parked on a client's property for on-site promotional events. Their advertisement states that the signage can be displayed as tri-action, which means the signage rotates and can change copy as it is being displayed. The zoning office has determined the sign functions as a portable sign. On January 17, 2006, the applicant was issued a Notice of Violation for the use of the portable sign. On January 31, 2006, the applicant appealed the Notice of Violation. Section 30-2-2.11 defines a *Portable sign* as: "Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to signs: designed to be transported by means of wheels; converted to A- or T-Frames; menu and sandwich board signs; gas or hot-air filled balloons; umbrellas used for advertising; signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operation of the business." Section 30-5-5.2 Prohibited signs states that: "Unless otherwise permitted under this Article, the following signs are prohibited in all zoning districts:" One of the types of prohibited signs is covered by subsection (C): "Portable signs, but not including signs which cannot be read from the public right-of-way and sandwich board signs as permitted in Section 30-5-5.17." At their August 22, 2005 meeting, the Board heard an appeal, BOA Case #05-30 that was almost identical to this request. That appeal was denied.

Justin Reeves, 3010 Burkemill Drive, Raleigh, NC, representing the applicant, came forward and asked that this item be continued to allow him time to obtain an attorney.

Mr. Pinto moved to continue the item at the request of the applicant, seconded by Mr. Parmele. The Board voted 5-0 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

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There being no further business before the Board the meeting was adjourned at 5:10 p.m.

Respectfully submitted,

John Cross, Vice Chair  
Greensboro Board of Adjustment

JC/jd